

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHLOÉ SAS,

:
07 Civ. _____
:

Plaintiff,

-against-
:

MELISSA WAGNER d/b/a "NAPAGIRL,"
JOHN DOES I-V and iOFFER, INC.,
Defendants.
:

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**DECLARATION OF AMORY W. DONELLY
IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER,
PRELIMINARY INJUNCTION, *EX PARTE* SEIZURE ORDER,
ASSET FREEZE ORDER, AND ORDER FOR EXPEDITED DISCOVERY**

AMORY W. DONELLY, declares under penalty of perjury as follows:

1. I am an attorney at law licensed to practice in the State of New York and an associate of the law firm of Howrey LLP, attorneys for the Plaintiff. I submit this declaration in support of Plaintiff's Application for Temporary Restraining Order ("TRO"), Preliminary Injunction, *Ex Parte* Seizure Order, and Motion for Expedited Discovery and Asset Freeze. The matters referred to in this declaration are based upon my personal knowledge, and/or when referencing documents, such documents were reviewed by me and where applicable, were obtained and compiled at my instruction by other attorneys and paralegals employed by Howrey, and if called as a witness I could and would testify competently thereto.

Prior Court Orders Regarding Counterfeiting of Chloé Goods

2. Attached as Exhibit 1 is true and correct copy of an order issued on December 6, 2005 by the United States District Court for the Southern District of New York in *Chloé, S.A. v. Veal*, No. 05 Civ. 9875 (MGC) granting Chloé's applications for a Temporary Restraining Order, *Ex Parte* Seizure Order, Asset Freeze Order, and Expedited Discovery Order to prevent the counterfeiting of its famous handbags.

3. Attached as Exhibit 2 is true and correct copy of an order issued on December 16, 2005 by the United States District Court for the Northern District of Illinois in *Chloé, S.A. v. Sophisticated Spirit, No. 05C-7004 (EEB)* granting Chloé's applications for a Temporary Restraining Order, *Ex Parte* Seizure Order, Asset Freeze Order, and Expedited Discovery Order to prevent the counterfeiting of its famous handbags.

Articles Regarding Return Fraud

4. Attached as Exhibit 3 is a true and correct copy of a report issued in November 2004 by the City of New York Office of the Comptroller entitled "Bootleg Billions: The Impact of the Counterfeit Goods Trade on New York City." The report states that in New York City alone, upwards of \$23 billion annually is spent on counterfeit goods.

5. Attached as Exhibit 4 is a true and correct copy of an article from The San Jose Mercury News, dated November 1, 2006, reporting that a survey conducted by the National Retail Federation of 90 retailers found that 95% of the retailers had experienced returns of stolen merchandise and 52% of the return fraud involved returns using counterfeit receipts.

6. Attached as Exhibit 5 is a true and correct copy of an article from The Akron Beacon Journal, dated November 23, 2006, reporting on a National Retail Security Survey conducted by the University of Florida which found that 81% of the surveyed retailers had been victims or organized retail crime, including the use of counterfeit receipts. The same article reported that according to the National Retail Federation, "[r]etail crime losses reached a record high of \$37.4 billion nationally last year."

7. Attached as Exhibit 6 is a true and correct copy of an article from The Wall Street Journal, dated February 22, 2007, reporting that the National Retail Federation estimated that "[r]eturn fraud soaked retailers for an estimated \$9.6 billion in 2006."

8. Attached as Exhibit 7 is a true and correct copy of a press release, dated June 11, 2007, issued by the United States Department of Justice, District of New Jersey, reporting on a guilty plea entered by a Brooklyn man to charges for wire fraud stemming from his counterfeit receipt scheme

which defrauded retailers Bed, Bath & Beyond, Pier 1 Imports, Michaels Stores and F.Y.E. out of approximately \$200,000.

Defendant Wagner's Internet Postings

9. Attached as Exhibit 8 at pg. 4 is a true and correct copy of an internet print-out from a discussion board at <iOffer.com>, dated October 2, 2007, containing a summary of all postings by "Missywagn" a/k/a Defendant Wagner. One of the listed postings states "be careful with adding a second Paypal account. I added a new Paypal acct with some false info...."

10. Attached as Exhibit 9 at pg. 2 is a true and correct copy of an internet print-out from a discussion board at <iOffer.com>, dated October 2, 2007, containing an August 29, 2006 posting by "Missywagn" a/k/a Defendant Wagner stating "[o]nce you get suspended from eBay they keep finding you so...I tried to open up a new Paypal account for my husband so I can still accept funds threw [sic] Paypal from other actions (like ioffer)...."

11. Attached as Exhibit 10 at pgs. 7-8 is a true and correct copy of an internet print-out from a discussion board at <iOffer.com>, dated October 2, 2007, containing a September 1, 2006 posting by "Missywagn" a/k/a Defendant Wagner describing how to avoid paying eBay suspension fees, stating "If it's not your 1st suspension you have all Sally Jo's info not yours IF Ebay sends your bill amount to collections it will go on sally jo's (the name you gave ebay to register) credit report anyways! I should say that they will not have anyone's info to report because there is no such person...." Exhibit 10 also contains a September 2, 2006 posting by "Missywagn" a/k/a Defendant Wagner from the same discussion responding that "The 'Sally Jo' part...was for the suspended Ebayer's that you are telling they HAVE TO PAY THE EBAY FEES after they were suspended if it is there second third, fourth...suspension they didn't use there real name or financial info to register so who cares about the fees." In the same September 2, 2006 posting "Missywagn" states that "we should all be pulling together to screw the companies that are s*****g us. Why do you care if a MULTI-TRILLION dollar company isn't getting their fees?"

12. Attached as Exhibit 11 at pg. 2 is a true and correct copy of an internet print-out from a discussion board at <iOffer.com>, dated October 2, 2007, containing a March 9, 2007 posting by "Missywagn" a/k/a Defendant Wagner describing how to get back onto eBay after being suspended for selling counterfeit goods, including instructions to change one's ISP address; create a new email, address, phone, and name; clear cookies and cache; and open a new "c.card" (credit card) and bank account.

13. Attached as Exhibit 12 at pg. 1 is a true and correct copy of an internet print-out from a discussion board at <iOffer.com>, dated October 12, 2007, containing an August 15, 2007 posting by "LuvLouie2" a/k/a Defendant Wagner stating that "I opened another Ebay account after being suspended for the 3th time from Ebay. My original suspension from Ebay was 3 years ago for designer items anyway." In the same posting LuvLouie2 offers that "[i]f anyone wants to get a legit seller account on Ebay after suspension I have a free blog with all the details on how to do it, you can find the info on my profile page."

14. Attached as Exhibit 13 is a true and correct copy of an internet print-out from <www.blogger.com/profile/13498472692446406010>, dated October 12, 2007, containing a July 2007 blog entry from MoneyMaker a/k/a Napagirl a/k/a Defendant Wagner posting a complete guide to getting back on eBay after being suspended.

15. Attached as Exhibit 14 is a true and correct copy of an internet print-out from <vuitton-fendi-gucci-elux-receipts.blogspot.com>, dated October 12, 2007, containing a blog entry from MoneyMaker a/k/a Napagirl a/k/a Defendant Wagner that offers for sale counterfeit Chloé receipt templates under the name MoneyMaker.

16. Attached as Exhibit 15 at pg. 3 is a true and correct copy of an internet print-out from a discussion board at <iOffer.com>, dated October 2, 2007, containing a June 7, 2006 posting by "Missywagn" a/k/a Defendant Wagner stating that she had received \$400.00 worth of CHLOE bags from Chinese scammers that were so cheap that she could not sell them and had to "eat the cost."

17. Attached as Exhibit 16 is a true and correct copy of an internet print-out from <iOffer.com> for the seller page of "luvlouie2" a/k/a Defendant Wagner, dated October 11, 2007,

showing the continuing sale of counterfeit receipt templates, including Counterfeit CHLOÉ Receipt Templates, and including a purchase by “rahjongg” on October 9, 2007.

iOffer Postings and Plaintiff's Communications with iOffer

18. Attached as Exhibit 17 is a true and correct copy of an internet print-out from <iOffer.com> for the seller page of “rahjongg” dated October 13, 2007, advertising the sale of “designer bag receipt templates”.

19. Attached as Exhibit 18 is a true and correct copy of the Notice of Infringement email submitted by Sheila Henderson of Richemont International, Ltd. to iOffer, Inc., dated May 25, 2007, requesting removal of counterfeit Chloé boutique receipts sold by “paradisebayfashions” from ioffer.com.

20. Attached as Exhibit 19 is a true and correct copy of the Notice of Infringement email submitted by Sheila Henderson of Richemont International, Ltd. to iOffer, Inc., dated May 25, 2007, requesting removal of counterfeit Chloé boutique receipts sold by “11banana11” from ioffer.com.

21. Attached as Exhibit 20 is a true and correct copy of iOffer's response email, dated May 29, 2007, to Sheila Henderson's Notice of Infringement email, confirming removal of “11banana11's” infringing listing.

22. Attached as Exhibit 21 is a true and correct copy of iOffer's response email, dated May 29, 2007, to Sheila Henderson's Notice of Infringement email confirming removal of “paradisebayfashions's” infringing listings.

23. Attached as Exhibit 22 is a true and correct copy of a cease and desist letter dated September 10, 2007 from Stacey King of Richemont International, Ltd. to Brian Gan of iOffer, Inc., requesting the cancellation of numerous accounts of iOffer members selling counterfeit Chloé boutique receipts, the deletion of prior advertisements for counterfeit Chloé boutique receipts, and the elimination of the use of search terms that facilitate the sale and distribution of of counterfeit Chloé receipts, including “receipt template”, “designer receipt template” and “Chloé template”.

24. Attached as Exhibit 23 is a true and correct copy of a letter dated September 13, 2007 from Alan Korn, counsel to iOffer, Inc., to Stacey King of Richemont International, Ltd., agreeing to

cancel the accounts of members selling counterfeit Chloé boutique receipts identified in Ms. King's September 10, 2007 letter, agreeing to "filter out the terms 'Receipt Templates', 'Designer Receipt Templates' and related keywords from the 'Narrow Your Search' results", and agreeing to "filter any listings which [sic] the combined terms 'Chloé and 'Receipt' from its search function".

25. Attached as Exhibit 24 is a true and correct copy of a letter dated September 19, 2007 from Susan Kayser, counsel to Richemont International, Ltd., to Alan Korn, counsel to iOffer, Inc., noting iOffer's noncompliance with Chloé's September 10, 2007, letter and renewing its request that iOffer cancel the accounts of members selling counterfeit Chloé boutique receipts, permanently delete the prior postings of cancelled users, remove the use of search terms that facilitate the sale and distribution of counterfeit Chloé receipt templates, and remove all "Wanted Ads" for Chloé receipt templates.

26. Attached as Exhibit 25 is a true and correct copy of a letter dated September 21, 2007 from Alan Korn, counsel to iOffer, Inc., to Susan Kayser, counsel to Richemont International, Ltd., advising that iOffer had cancelled the accounts of members selling counterfeit Chloé boutique receipts, including 'brandfasion' and 'topcell', removed the terms 'Receipt Templates', 'Designer Receipt' from the "Narrow Your Search" function, and providing contact information for some but not all identified sellers.

27. Attached as Exhibit 26 is a true and correct copy of an email dated September 21, 2007 from David Jaquette, counsel to Richemont International, Ltd., to Alan Korn, counsel to iOffer, Inc., notifying Mr. Korn that he had not provided the contact information for "luylouie2".

28. Attached as Exhibit 27 is a true and correct copy of an email dated September 21, 2007 from Alan Korn, counsel to iOffer, Inc., to David Jaquette, counsel to Richemont International, Ltd., advising that Mr. Korn will ask iOffer to forward the missing seller information.

29. Attached as Exhibit 28 at pgs. 1-2 is a true and correct copy of an internet print-out from the search results for "receipt template" at <iOffer.com>, dated October 14, 2007, and showing that "Designer gucci l*v cc h" is the first of the list of "Hot" items.

30. Attached as Exhibit 29 at pg. 1 is a true and correct copy of an internet print-out from the search results for "receipt template" at ioffer.com, dated October 14, 2007, showing that the "Designer Bag receipt templates" sold by "rhajongg" are a "Featured" item.

31. Attached as Exhibit 30 at pgs. 3 and 5 is a true and correct copy of an internet print-out from <iOffer.com>, dated October 14, 2007, for the seller page of "impurseonater" showing a posting made by "luvlouie2" a/k/a Defendant Wagner on June 14, 2007, stating "I know you don't accept offers from new members but I am not real new just new to this ID. We did business before, please ask babybelle about napa grl if you arent sure about me." In the same discussion between "luvlouie2" and "impurseonater", "luvlouie2" stated on June 28, 2007 "Ya know I was thinking about it and I registered with a bogus address to get back on ioffer so the address you sent the bag to is wrong if you got it from my ioffer stat."

32. Attached as Exhibit 31 at pg. 1 is a true and correct copy of an internet print-out from the "Fees and Credit Policy" at ioffer.com, dated October 14, 2007, stating that iOffer "charge[s] a Final Value Fee to your account upon the completion of a successful transaction." In the same print-out, at pg. 2, iOffer provides that a 5% charge is levied on sales that range from \$25.00 - \$99.00.

Miscellaneous

33. Attached as Exhibit 32 is a true and correct copy of an internet print-out of the Myspace Profile of "Melis" at <http://www.myspace.com/mrsmelis>, dated October 14, 2007, directing people to her website at www.hollywoodhardwear.com for handbags and other items.

34. Attached as Exhibit 33 is a true and correct copy of an email from "Napagirl" a/k/a Defendant Wagner at napagirl77@gmail.com to investigator Philip Restivo a/k/a "Fadi Beltran", dated September 4, 2007, listing www.hollywoodhardwear.com, www.ebaysellertools.blogspot.com and www.vuitton-fendi-gucci-elux-receipts.blogspot.com in Napagirl's signature line.

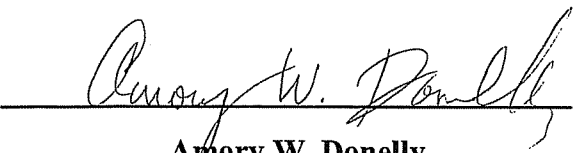
Cases

35. Attached as Exhibit 34 is a true and correct copy of the unreported case from the Southern District of New York, *North Face Apparel Corp. v. TC Fashions, Inc.*, No. 05 Civ. 9083, 2006 WL 838993 (S.D.N.Y. 2006).

36. Attached as Exhibit 35 is a true and correct copy of the unreported case from the Southern District of New York, *Cartier Intern. B.V. v. Liu*, No. 02 Civ. 7926, 2003 WL 1900852 (S.D.N.Y. 2003).

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury and of the laws of the United States that the foregoing is true and correct.

Dated: October 14, 2007


Amory W. Donnelly (DMJ)